

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 7322 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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PRAKASH K. BHAVLEKAR S/O KRISHNA BAVLEKAR - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR KHALID G SHAIKH for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/08/2007

ORAL JUDGMENT

By way of this application u/s 482 of Criminal Procedure Code, the applicant, - original accused has prayed for an appropriate order to quash and set aside the complaint and the proceedings titled as Rathod

Upendra Prabhudas, IO/DRI/ V. Subhas Singh and others dated 30-10-2006 in Sessions Case No.414 of 2006 pending in the Court of learned Addl. Sessions Judge, Court No.6, Ahmedabad city.

2. That the impugned complaint/Sessions Case No.414 of 2006 is filed by one Rathod Upendra Prabhudas, Intelligence Officer, Directorate of Revenue Intelligence, Ahmedabad against six named accused for the offence u/s 22, 29 r/w 8(c) of the NDPS Act, 1985 and section 120-B of the IPC, 1860.

3. It is alleged/averred in the complaint that DRI, Ahmedabad received an intelligence that one truck bearing registration No.JK-02L-0427 carrying approximately 250 kg of **Hashish (Charas)** will come at Adalaj and will be parked somewhere on the road side on 27-7-2006 and Shri Manoj who is supposed to take delivery of the said Hashish is staying at Hotel Yatri, Sector 16, Gandhinagar. It is submitted that on the basis of the intimation, a team of officers of DRI along with two independent panchas left for Adalaj and the panchas were briefed about the intelligence and were shown one search warrant dated 27-7-2006 issued by the Deputy Director of DRI, Ahmedabad authorizing the officer to search the aforesaid truck. Then, the officers started locating the said truck and at about 23:45 hrs the said truck was located at Adalaj Cross Road and it was found parked adjacent to the road along with other trucks. The cabin of the truck was found closed so, the officers knocked at the cabin door in response to which the driver who introduced himself as Subhash Singh opened the door. The officers gave their introduction and showed him the search warrant dtd 27-7-2006 and said Subhash Singh after

seeing the search warrant appended his signature on it and agreed for the search. The panchas present there also put their signatures on the search warrant. The key of the truck was found in the ignition hole but the truck was not in running condition. One another man viz. Rafiq Ahmed Sheikh, cleaner of the said truck was found inside the cabin of the truck. The officers when questioned Subhash Singh about the presence of Hashish in the truck, he after initial hesitation, admitted that he was carrying 72 bundles of Hashish and the same were concealed in the backside of the cabin. That, as it was raining heavily, the truck was taken to the DRI office and after complying with the necessary procedure required under the NDPS Act started conducting search and on being asked about the place of concealment of Hashish, Subhash Singh opened a small door at the top on the rear side of driver cabin, inside which many clothes were kept. The clothes were removed and inside that laminated floor was seen. Subhash Singh informed in presence of panchas that there is a cavity underneath the laminated board and to take out the packets of Hashish, laminated board is required to be removed. Subhash Singh then took out one key from the front dashboard and gave it to the officers. Then, the laminated sheet was removed and a small keyhole was found beneath that. The key given to the officers was inserted into that hole and the cavity was opened. On opening the said cavity, several brown coloured plastic bundles each one wrapped with white coloured tape were found. Some bundles were taken out of the cavity but as the cavity was deep, all bundles could not be taken out from the top of the cavity. On being asked, Shri Singh informed that on the backside beneath the seat there were two wooden ply fixed with bolts, on opening of which remaining bundles of Hashish could be taken out. On being

asked, Shri Singh took out the remaining bundles from the said cavity. Thereafter, on counting total 73 bundles were found. Thus, total 507 packets having outer cover of brown coloured plastic bags and having markings "Cappucino Chocolate" on all of them were found. That during the course of the investigation and after recording the statement of various persons, the particulars of which are given in the complaint, it was found that all the accused persons named in the complaint six in numbers inclusive of the petitioner have committed the offence as alleged u/s 22, 29 r/w 8(c) of the NDPS Act, 1985 and section 120-B of the IPC, 1860. The relevant/main allegations against the petitioners are stated in para 8.1, 16, 25, 25.1, 26, 27, 29, 31, 31.2, 31.3, 31.4 and 31.7 of the memo of Sessions Case No.414/06.

4. Making the aforesaid allegations, the Intelligence Officer, DRI filed the aforesaid complaint in the Court of learned Principal Sessions Judge, Ahmedabad against the six accused inclusive of the petitioner for the offence u/s 22, 29 r/w 8(c) of the NDPS Act, 1985 and section 120-B of the IPC, 1860 and by order dated 6-11-2006, the learned trial Court has issued non bailable warrants against the accused No.6, the petitioner herein. Hence, the petitioner has preferred the present application u/s 482 of the Criminal Procedure Code to quash and set aside the impugned complaint.

5. Shri Sunil Mehta, learned advocate appearing on behalf of the petitioner has submitted that except the statement of the co-accused Shri Manoj Gohil, there is no material and or evidence connecting the petitioner with the alleged offence. It is also further submitted that on

the basis of the statement of the co-accused, the petitioner cannot be convicted as the statement of the co-accused is inadmissible in evidence. It is also further submitted that even there are false statements of the co-accused Manoj Gohil, as according to the petitioner, he was never with the said Manoj Gohil at any point of time in Arthur Jail. Therefore, there was no question of meeting said Manoj Gohil by the petitioner and instructing and/or telling said Manoj Gohil to obtain Hashish for the petitioner. It is submitted that even the said co-accused whose statement is used against the petitioner i.e. Manoj Gohil has already expired. Therefore, also the said statement cannot be relied upon and therefore, it is requested to quash the complaint against the petitioner, - original accused No.6. It is also further submitted that the petitioner has not committed any offence as alleged and to continue the criminal proceedings against the petitioner would be nothing but harassment to the petitioner. It is submitted that the petitioner has already represented to the Central Government against the false complaint filed against the petitioner by the DRI and it is requested to the Central Government to issue appropriate order or direction to the concerned authorities to drop the illegal proceedings initiated against the petitioners.

6. On the other hand, the ld. APP has submitted that so far as the petitioner, - original accused No.6 is concerned, there are clear averments and allegations against him in the complaint in detail and considering the huge quantity of Hashish seized, the impugned complaint is not required to be quashed and set aside. It is also further submitted by the ld. APP that right from the very beginning, the petitioner has never cooperated

the Investigating Officer and has never appeared before the officer in spite of the several summons issued to remain present for interrogation, still the petitioner is absconding and has not cooperated the Investigating Officer and so far as the petitioner is concerned, no investigation is carried out and when the petitioner is absconding and has not cooperated the Investigating Officer, it is requested not to exercise powers u/s 482 of Criminal Procedure Code.

7. Heard the learned advocates appearing on behalf of the parties.

8. It is the contention of the petitioner herein that after the investigation, there is no material and/or evidence against the petitioner, except the statement of the co-accused as reflected in the complaint i.e. statement of one shri Manoj Gohil and even the said statement of the co-accused is false and that even otherwise the statement of the co-accused is inadmissible in evidence and therefore, it is the contention of the petitioner to quash the complaint. It is also the contention of the petitioner that even the co-accused Manoj Gohil has expired and the only material available with the Investigating Officer/the complainant was the statement of the co-accused who has now expired and therefore, the complaint should be quashed. At this stage, it is required to be noted that the DRI has seized huge quantity of Hashish (Charas), more particularly, approximately 262 kg of Hashish and the allegation in the complaint revealed that the petitioner herein is the master mind, at whose instance and for whom, the aforesaid huge quantity of Hashish (charas) was being transported. It is also alleged in the complaint

narrating and considering the petitioner's role and after holding inquiry/investigation that a conspiracy was entered into by Shri Manoj Gohil accused No.2 and Prakash Bhavlekar, accused No.6 (petitioner herein) both of Mumbai to export Hashish/charas illegally by way of concealment of the same in photoframes. It is required to be noted that earlier also, the petitioner herein was arrested along with one another accused in a case of seizure of 1436.50 kg of Methaquelene (mandrex tablets) from export consignment and both of them were convicted by the NDPS Special Court, Greater Mumbai in the year 1999, however, subsequently they were acquitted by the Bombay High Court. It is also averred in the complaint that the petitioner was also doing the business of export. However, further investigation could not be carried out as the petitioner is absconding and has never appeared before the Intelligence Officer/Investigating Officer in spite of various summons issued.

9. As per the averments and allegations in the complaint as the petitioner herein did not appear before the DRI, Mumbai in compliance of two summons issued to him, another effort was made to locate and record his evidence and a summons dated 22-9-06 requiring him to appear on 29-9-06 was issued at his residence with a copy to his office and in response to the summons dated 22-9-06, a letter dated 25-9-06 was received from his advocate stating that his client Shri Bavlekar (petitioner herein) was not in a position to appear on the given date as he was out of Mumbai for two months for urgent professional reasons and that his client did not have any import or export firm/company and he had not made any import or export in the year 2005-2006 and 2006-2007 and that his client would attend the office after he comes back from

his work. It also appears from the complaint that another summons dated 29-9-2006 to appear on 6-10-2006 was forwarded to the petitioner at his residential address with a copy to his advocate requesting him to direct his client to tender his evidence on the scheduled date as the inquiry was a time bound and that DRI could not wait for two months. In response to the summons dated 29-9-2006, another letter dtd 5-10-2006 was received from the advocate of the petitioner reiterating his earlier version i.e. his client was out of Mumbai and he could not appear for his evidence due to his professional work. It appears that another request was made to Shri Ayaz Khan, advocate with a copy of third summons dtd 6-10-2006 issued to the petitioner herein to appear on 13-10-2006 and Shri Khan was also impressed about the necessity of evidence of his client and further made clear that in case of failure, action would be initiated as per the law. Similar letters enclosing summons dtd 6-10-2006 were sent to the residence and office addresses of the petitioner herein. As the petitioner did not appear on 13-10-2006, summons dated 18-10-2006 was issued to him at his residence and office address. It is further stated in the complaint that in response to the summons dated 6-10-2006, Shri Khan vide his letter dated 14-10-2006 informed the DRI that his client would contact DRI office as soon as he is free from his urgent business obligations and present himself if required. It is further averred in the complaint that as regards Shri Prakash Bavlekar (mentioned as accused No.VI), six summons as discussed above were issued but he has failed to appear for further investigation. Efforts are afoot to trace these persons, hence the prosecution reserves its right to file separate complaint/s after they are located and investigation against them is completed. As soon as they are traced,

they will be produced before the Hon'ble Court for trial after examining their involvements. Thus, considering the above, it appears that the petitioner is absconding; petitioner has never appeared before the DRI for further investigation and/or interrogation. Petitioner has never cooperated the Investigating Officer/DRI. In spite of various summons, the petitioner did not appear before the DRI and as and when the summons are received, his advocate has submitted to the DRI that the petitioner is busy and as soon as he is free, he will appear before the DRI for further investigation. However, till date the petitioner has never appeared before the DRI and has never cooperated and therefore, so far as the petitioner is concerned, the investigation is not proceeded further. Under the circumstances, now the question which is required to be considered is whether the petitioner who has not cooperated the DRI in investigation and who is absconding deserves any relief in a petition/ application u/s 482 of Criminal Procedure Code. The accused who is absconding and who has not cooperated the Investigating Officer/DRI and against whom the investigation is not even commenced, as he could not be interrogated does not deserve any relief in a petition u/s 482 of Criminal Procedure Code. Even, otherwise considering the averments and allegations in the complaint, it cannot be said that there is no case against the petitioner at all. After the petitioner cooperates the DRI and the Investigating Officer in the investigation, the submission of the petitioner can be considered only thereafter and at this stage, submission of the petitioner that only evidence against the petitioner is the statement of the co-accused and therefore, there are bleak chances of conviction of the petitioner is not required to be considered at this stage. After the investigation is over, then and then

only, the aforesaid aspect can be considered. The statement of the co-accused at the initial stage of investigation can be the basis for further investigation and therefore, at the stage of investigation, the aforesaid aspects are not required to be considered and the complaint is not required to be quashed and set aside on that ground at this stage in exercise of powers u/s 482 of Criminal Procedure Code.

10. For the reasons stated above, the petition fails and is accordingly dismissed.

(M.R. Shah, J.)

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